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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

CC DOCKET NO. 93-161

Clark-Bader, Inc., d/b/a)
TMC Long Distance,)
Complainant,)

v.)

Pacific Bell,)
Defendant.)

File No. E-89-85

TO: The Honorable Walter C. Miller
Administrative Law Judge

COMMENTS ON PETITION FOR CLARIFICATION

discretion to apply the "best evidence available" rule² in determining whether the testimony of witnesses seeking immunity is required to resolve the issues designated in this proceeding. A requirement that such testimony be "essential" or "absolutely essential" is not only consistent with 18 U.S.C. § 6004 but also better serves the goal shared by the parties, the Presiding Judge and the Commission of expediting these proceedings in an efficient, orderly fashion.

The Bureau believes, however, that there are at least two factors present that warrant early consideration of Pacific's immunity request by the Presiding Judge. First, the alleged misconduct and resultant harm occurred, if at all, several years ago between 1985 and 1988. While the Bureau has no independent knowledge regarding the number or existence of former TMC customers who could testify regarding their cancellation of TMC's service during this timeframe, the location, availability and recollection of any of these customers could be severely limited due to the substantial lapse of time. Second, Pacific has raised as a defense to TMC's complaint the claim that TMC's principal falsified customer records and knowingly submitted documents containing the false information to the Commission to support its complaint. The Bureau believes that Pacific's allegations in this regard raise not only concerns about the veracity of TMC's principal and the credibility of its claims but also serious questions of impropriety that, if unresolved, could threaten to undermine the integrity of the Commission's processes.³

2 See 93M-485, released July 23, 1993 at para. 3.

3 Although the Hearing Designation Order, DA 93-640, did not specifically designate an issue in this regard, the Bureau believes that inquiries into the truthfulness as well as credibility of TMC's submissions to this Commission in this complaint proceeding are properly encompassed by the designated issues.

Because of these important factors, the Bureau respectfully submits that Pacific's immunity request warrants early consideration by the Presiding Judge and Pacific should be permitted to renew its request at the Prehearing Conference. Indeed, given the substantial lapse of time in this case and the serious allegations of impropriety directed at TMC's principal, the testimony of the two witnesses seeking immunity could very well comport with the best available evidence rule. In any event, the Bureau believes that the immunity question should be more fully explored at the Prehearing Conference where Pacific